

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE: ROBERT J. SPENLINHAUER

Civil No. 99-364-P-C

Chapter 7 Case No. 90-20750

Gene Carter, District Judge

MEMORANDUM OF DECISION AND ORDER

Robert J. Spenlinhauer, Appellant, appeals from an order entered by the Bankruptcy Court on remand by this Court in a prior opinion dated March 8, 1999. He attempts to reargue before this Court two issues that were adjudicated against him on the prior appeal; namely (1) whether the Ayer affidavit was properly considered by the Bankruptcy Court Judge in rendering the initial decision appealed from, and (2) whether the sale of the JRS Trust interest was in good faith. Those issues having been previously resolved, no further consideration will be given to them here, and this Court's prior ruling on those issues is AFFIRMED.

The only question remaining on this appeal is whether the Bankruptcy Court has responded appropriately to this Court's concern in its prior opinion as to whether procedural irregularities in the giving of notice invalidated the release given to the purchasers of the JRS Trust interest as part of the sale transaction in the Bankruptcy Court.

In addressing the Court's concerns in respect to the validity of the release, Bankruptcy Judge Haines wrote as follows:

Notwithstanding any flaws in the process authorizing the release, I am more than satisfied that, as to Robert, it was fair. As noted above, he understood from the beginning that the functional equivalent of such a release was bound up in the sale transaction. During the period of time that hearings on the sale were continued, Robert had the opportunity to propose alternative courses of action for the trustee, but he never has contended that he did so, other

than to ask that they be abandoned (for his exclusive benefit). Robert, knowing full well the scope of my November 10, 1998, ruling, never asked that the sale transaction, or any portion of it, be stayed pending appeal.

For the reasons set forth above, having considered the issues on remand, I conclude that the estate's release of claims to John and Stephen Spenlinhauer, as a component part of the sale authorized on November 10, 1998, shall (indeed, must) stand without modification.

Appendix, Second Designation of Record on Appeal, Docket No. 28, Decision on Remand at 4-5 (emphasis added) (footnote omitted).

The Bankruptcy Judge's conclusion as set forth above is based upon his prior determination that "Robert Spenlinhauer's contest of the release's vitality is moot." *Id.* at 4. This conclusion is based upon the proposition for which the Bankruptcy Judge cites adequate First Circuit authority that, absent a stay pending appeal, Bankruptcy Code section 363(m) precludes appellate relief invalidating a sale to a "good faith" purchaser; citing *Mark Bell Furniture Warehouse, Inc. v. D.N. Reid Assocs., Ltd. (Mark Bell Furniture Warehouse, Inc.)*, 922 F.2d 7, 8 (1st Cir. 1993). On full review of the status of this matter, this Court concludes that the Bankruptcy Judge's findings and conclusions of law are amply supported by the record and the prior authority of the Court of Appeals upon which he relied and concludes that they adequately address the concerns which prompted this Court, as a result of the first appeal, to send back to the Bankruptcy Court for determination the issue of the validity of the release issued to the purchasers of the JRS Trust interest.

Accordingly, the appeal herein is **DENIED**. The action of the Bankruptcy Court is **AFFIRMED**. The request for oral argument is **DENIED**, the Court having no need thereof.

So **ORDERED**.

GENE CARTER
District Judge

Dated at Portland, Maine this 18th day of February, 2000.